

REMARKS

At the time of the First Office Action dated November 13, 2007, claims 1-14 were pending and rejected in this application.

CLAIM 1 IS REJECTED UNDER 35 U.S.C. § 102 AS BEING ANTICIPATED BY MANGIPUDI ET AL., U.S. PATENT PUBLICATION NO. 2004/0162901 (HEREINAFTER MANGIPUDI)

On pages 2-4 of the First Office Action, the Examiner asserted that Mangipudi discloses the invention corresponding to that claimed. This rejection is respectfully traversed.

The factual determination of anticipation under 35 U.S.C. § 102 requires the identical disclosure, either explicitly or inherently, of each element of a claimed invention in a single reference.¹ Moreover, the anticipating prior art reference must describe the recited invention with sufficient clarity and detail to establish that the claimed limitations existed in the prior art and that such existence would be recognized by one having ordinary skill in the art.² As part of this analysis, the Examiner must (a) identify the elements of the claims, (b) determine the meaning of the elements in light of the specification and prosecution history, and (c) identify corresponding elements disclosed in the allegedly anticipating reference.³ This burden has not been met.

¹ In re Rijckaert, 9 F.3d 1531, 28 USPQ2d 1955 (Fed. Cir. 1993); Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989); Perkin-Elmer Corp. v. Computervision Corp., 732 F.2d 888, 894, 221 USPQ 669, 673 (Fed. Cir. 1984).

² See In re Spada, 911 F.2d 705, 708, 15 USPQ 1655, 1657 (Fed. Cir. 1990); Diversitech Corp. v. Century Steps, Inc., 850 F.2d 675, 678, 7 USPQ2d 1315, 1317 (Fed. Cir. 1988).

³ Lindermann Maschinenfabrik GMBH v. American Hoist & Derrick Co., 730 F.2d 1452, 221 USPQ 481 (Fed. Cir. 1984).

Claim 1, in part, recites the following limitation:

a routing policy selector configured for communicative linkage to a server cluster comprising a plurality of servers and programmed to select a particular one of said request routing policies for use in routing content requests in said server cluster based upon said cache metrics, said routing policy selector further comprising a coupling to said routing policies and said data store of cache metrics.

In the paragraph spanning pages 3 and 4 of the First Office Action, the Examiner cited paragraphs [0018], [0020], [0037], and [0039] of Mangipudi and asserted the following:

Man teaches a routing host (router) having a policy engine used to make routing decisions using parameters and defined policies. The router is connected to server host referred to as cluster. It also keeps a database with policies and parameter used to make routing decisions.

Absent from both the Examiner's analysis and the cited passages within Mangipudi, however, is a discussion of selecting a request routing policies based upon cache metrics. Paragraph [0018] of Mangipudi describes routing and load balancing, but this passage discusses neither selecting a request routing policy nor cache metrics. Paragraph [0020] describes that routing decisions are based upon information in a Management Information Base (MIB); however, this passage is silent as to selecting a particular request routing policy based upon cache metrics. Paragraph [0037] describes that requests are routed based on policies, but this passage does not describe how the policies are selected or contain any mention of cache metrics. Paragraph [0039] is a discussion of the general mechanics involved in routing requests but is silent as to selecting a request routing policy or cache metrics. Therefore, Applicants submit that the Examiner has failed to establish that Mangipudi identically discloses the claimed routing policy selector.

For above-described reasons, the Examiner has failed to establish that Mangipudi identically discloses the claimed invention, as recited in claim 1, within the meaning of 35 U.S.C. § 102. Applicants, therefore, respectfully submit that the imposed rejection of claim 1 under 35 U.S.C. § 102 for anticipation based upon Mangipudi is not factually viable, and hence, Applicants solicit withdrawal thereof.

CLAIMS 2-6 ARE REJECTED UNDER 35 U.S.C. § 103 FOR OBVIOUSNESS BASED UPON MANGIPUDI IN VIEW OF APPLICANTS' ADMITTED PRIOR ART (HEREINAFTER THE ADMITTED PRIOR ART)

On pages 4-7 of the First Office Action, the Examiner concluded that one having ordinary skill in the art would have been impelled to modify Mangipudi in view of the Admitted Prior Art to arrive at the claimed invention. This rejection is respectfully traversed.

Claims 2-6 depend from independent claim 1, and Applicants incorporate herein the arguments previously advanced in traversing the imposed rejection of claim 1 under 35 U.S.C. § 102 for anticipation based upon Mangipudi. The Examiner's secondary reference of the Admitted Prior Art does not cure the argued deficiencies of Mangipudi. Accordingly, even if one having ordinary skill in the art would have been impelled to combine the applied prior art, the claimed invention would not result from the Examiner's combination. Applicants, therefore, respectfully submit that the imposed rejection of claims 2-6 under 35 U.S.C. § 103 for obviousness based upon Mangipudi in view of the Admitted Prior Art is not viable, and hence, Applicants solicit withdrawal thereof.

CLAIMS 7-14 ARE REJECTED UNDER 35 U.S.C. § 103 FOR OBVIOUSNESS BASED UPON
MANGIPUDI IN VIEW OF YANG ET AL., U.S. PATENT PUBLICATION NO. 2002/0199014
(HEREINAFTER YANG)

On pages 7-15 of the First Office Action, the Examiner concluded that one having ordinary skill in the art would have been impelled to modify Mangipudi in view of Yang to arrive at the claimed invention. This rejection is respectfully traversed.

Claim 7, in part, recites the following limitation:

retrieving at least two sets of hit rate metrics, each set of metrics corresponding to a particular routing policy.

In the paragraph spanning pages 7 and 8 of the First Office Action, the Examiner cited paragraph [0019], [0020], [0026], and [0038] of Mangipudi and asserted the following:

Man teaches reporting to the policy engine total hits second, CPU utilization, response times of servers, URL/content availability. These are all sets of hit rate metrics. The policy engine uses these parameters in policies to route requests. Policies are class of service (CoS) and service level agreement (SLA).

At the outset, Applicants disagree with the Examiner's characterization of the claimed "sets of hit rate metrics." CPU utilization, response times of servers, URL/content availability are not sets of hit rate metrics, as claimed. Moreover, the Examiner has failed to provide any factual support to (or analysis for) the notion that one having ordinary skill in the art, given the broadest, reasonably interpretation of the phrase "sets of hit rate metrics" consistent with Applicants' specification, would consider CPU utilization, response times of servers, URL/content availability as being comparable to the claimed sets of hit rate metrics.

1 Applicants also note that the Examiner has failed to establish that Mangipudi disclose the
2 claimed "each set of metrics corresponding to a particular routing policy." Of the Examiner's cited
3 passages, the only discussion of hit rates is found in paragraph [0019]. However, this paragraph
4 merely describes the information that is being collected "for each virtual site and for each web farm"
5 and does not associate a set of metrics with a particular routing policy. Accordingly, even if one
6 having ordinary skill in the art would have been impelled to combine the applied prior art, the
7 claimed invention would not result from the Examiner's combination. Applicants, therefore,
8 respectfully submit that the imposed rejection of claims 7-15 under 35 U.S.C. § 103 for
9 obviousness based upon Mangipudi in view of Yang is not viable, and hence, Applicants solicit
10 withdrawal thereof.

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Applicants have made every effort to present claims which distinguish over the prior art, and it is believed that all claims are in condition for allowance. However, Applicants invite the Examiner to call the undersigned if it is believed that a telephonic interview would expedite the prosecution of the application to an allowance. Accordingly, and in view of the foregoing remarks, Applicants hereby respectfully request reconsideration and prompt allowance of the pending claims.

Although Applicants believe that all claims are in condition for allowance, the Examiner is directed to the following statement found in M.P.E.P. § 706(II):

When an application discloses patentable subject matter and it is apparent from the claims and the applicant's arguments that the claims are intended to be directed to such patentable subject matter, but the claims in their present form cannot be allowed because of defects in form or omission of a limitation, the examiner should not stop with a bare objection or rejection of the claims. The examiner's action should be constructive in nature and when possible should offer a definite suggestion for correction. (emphasis added)

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 09-0461, and please credit any excess fees to such deposit account.

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